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JUN 30 2005

Federal Communications Commission
Office of Secretary

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June 30, 2005

EX PARTE OR LATE FILED

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals, Room TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: **Request to Bar Further Ex Parte Presentations
in MB Docket No. 04-75**

Dear Ms. Dortch:

Sunbelt Communications Company ("Sunbelt"), by its counsel, respectfully requests the Commission to bar further ex parte presentations to decision-making FCC personnel relating to this matter.

Shortly after the formal filing by Max Media of its "Request For Expedited Declaratory Ruling" on February 25, 2004, it had ex parte meetings with Commission staff to lobby for treatment of this proceeding as a permit but disclose proceeding.¹ Although Sunbelt formally opposed the Max Media petition, including its request to designate this as a permit but disclose proceeding, the staff issued a Public Notice (DA-04-747) on March 19, 2004 (copy attached) designating this as a permit but disclose proceeding on the basis of Max Media's: "indication that it is seeking a declaratory ruling rather than specific enforcement action..."

Regardless of the wisdom of the staff's initial determination to treat this as a permit but disclose proceeding, it is now obvious that Max Media (now joined by its assignee, Destiny Licenses, LLC) is seeking direct, specific enforcement actions against Sunbelt and its affiliates, as well as against NBC; it is not seeking some generic rule interpretation. Indeed, the intent and actions of Max Media to misuse this proceeding has been evident to Sunbelt from the beginning. However, any doubt as to Max Media's motive has been removed by its last filing on June 24, 2005 (*See*, "Supplement to Joint Motion for Expedited Issuance of Show Cause Orders") asking the Commission to start license revocation proceedings against six Sunbelt television stations and to issue orders prohibiting further alleged "rule violations" by Sunbelt and NBC.

¹ These initial ex parte meetings were held on March 3, 2004, with legal advisors to the Commissioners and with members of the Media Bureau.

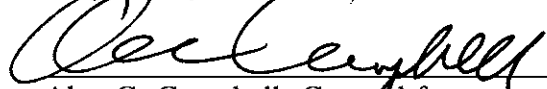
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Marlene H. Dortch, Secretary
June 30, 2005
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In a not dissimilar proceeding (*Application of Ex Parte Rules to Proceeding Involving "Formal Petition for Order to Show Cause" Against Tampa Bay Television, Inc., Station WFTS(TV), Tampa, Florida, 9 FCC Rcd 3418 (1994) (copy attached)*), the Commission recognized that a request by a disgruntled station for the Commission to issue an order to show cause relating to alleged violations of the network territorial exclusivity rule was a restricted adjudicatory proceeding. As a result, the Commission barred ex parte communications in the WFTS proceeding. It is clear that further ex parte presentations in this proceeding must stop immediately, although the serial ex parte Commission meetings by Max Media may have already so tainted this proceeding that it is too late to set things straight.

Respectfully submitted,



Alan C. Campbell, Counsel for
Sunbelt Communications Company

cc (via email and hard copy)
Kevin Martin, Chairman
Kathleen Q. Abernathy, Commissioner
Michael J. Copps, Commissioner
Jonathan S. Adelstein, Commissioner
Jon Cody
Stacy Robinson-Fuller
Catherine Bohigan
Jordan Goldstein
Johanna Shelton
Mary Beth Murphy
Marcia Glauberman
Roger Holdberg
Judith Herman
Julian L. Shepard, Esquire
Erwin G. Krasnow, Esquire
Donna C. Gregg, Chief, Media Bureau
Roy H. Stewart, Senior Deputy Chief, Media Bureau
William H. Johnson, Deputy Bureau Chief
Robert H. Ratcliffe, Deputy Bureau Chief
John B. Norton, Deputy Chief of the Policy Division
Jane Gross
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PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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DA 04-747

Released: March 19, 2004

**COMMENT SOUGHT ON "REQUEST FOR EXPEDITED DECLARATORY RULING"
CONCERNING THE TERRITORIAL EXCLUSIVITY RULE (SECTION 73.658(B) OF
THE COMMISSION'S RULES)**

"PERMIT BUT DISCLOSE" EX PARTE STATUS ACCORDED

Comment Date: [21 days after Federal Register publication of this Notice]

Reply Comment Date: [31 days after Federal Register publication of this Notice]

On February 25, 2004, Max Media of Montana LLC ("Max Media") filed a "Request for Expedited Declaratory Ruling" ("Request"). The Request seeks a Commission ruling concerning Section 73.658(b) of the Commission's Rules (47 C.F.R. § 73.658(b)), the "territorial exclusivity" rule. The territorial exclusivity rule, in part, provides that, "No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization...which prevents or hinders another broadcast station located in a different community from broadcasting any program of the network organization."

Max Media contends that the NBC television network and Sunbelt Communications Company and companies it controls ("Sunbelt") have an agreement under which NBC will not renew its current NBC affiliation with Max Media's KTGF-TV in Great Falls, Montana, when that affiliation agreement expires in 2005. Under this arrangement, Max Media alleges, NBC will, instead, give the affiliation to Sunbelt, which has NBC-affiliated stations in nearby communities. Sunbelt does not have a station licensed to Great Falls, Montana, but would allegedly provide coverage of Great Falls using stations it controls in nearby communities and through booster, translator and low-power television stations that it has applied for in Great Falls. Max Media has filed pleadings in opposition to those license applications.

Max Media contends that the alleged agreement constitutes an arrangement between Sunbelt and a network organization (i.e., NBC) with regard to Sunbelt's stations in communities other than Great Falls, Montana, which "prevents or hinders another broadcast station located in a different community (i.e., Max Media's station in Great Falls) from broadcasting any program of the network organization," in violation of the territorial exclusivity rule. It requests an expedited declaratory ruling pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, and

Section 5(d) of the Administrative Procedure Act, § 5 U.S.C. 554(e), in order to terminate this controversy and to resolve a dispute concerning the territorial exclusivity rule.

On March 10, 2004, Sunbelt filed an "Opposition of Sunbelt Communications Company to Request for Expedited Declaratory Ruling" ("Opposition"). In the Opposition, Sunbelt asserts that a declaratory ruling is inappropriate in this case because there is no controversy to terminate or uncertainty to remove. Additionally, it asserts that there is no merit to Max Media's complaint that the territorial exclusivity rule is being violated by Sunbelt or NBC. Rather, it contends, all that is present in this matter is the exercise of normal business judgments by the parties.¹

We invite comment on the Max Media petition.

Ex parte status: In order to permit a full exchange of views on the issues raised in the Request, and Max Media's indication that it is seeking a declaratory ruling rather than specific enforcement action, we have concluded that the public interest would be served by classifying this proceeding, as well as the related pending application proceedings,² as permit-but-disclose under the ex parte rules notwithstanding the existence of related applications and oppositions. Accordingly, by this Public Notice, and pursuant to Section 1.1200(a) of the Commission's Rules, 47 C.F.R. § 1.1200(a), we announce that these proceedings will be governed by permit-but-disclose ex parte procedures that are applicable to nonrestricted proceedings under Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206.

Permit-but-disclose ex parte procedures permit interested parties to make ex parte presentations to the Commissioners and Commission employees and require that these presentations be disclosed in the record of the relevant proceeding. Persons making a written ex parte presentation to the Commissioners or Commission employees must file the written presentation with the Commission, as set forth below, no later than the next business day after the presentation. 47 C.F.R. § 1.1206(b)(1). Persons making oral ex parte presentations must file a summary of the presentation, as set forth below, and deliver copies to the Commissioners or Commission employees involved with the presentation no later than the next business day after the presentation. 47 D.F.R. § 1.1206(b)(2). All ex parte filings must be clearly labeled as such and must reference this Public Notice, DA 04-747, as well as any other applicable docket or file numbers.

Comments must be filed on or before [21 days after Federal Register publication of this Notice]; and reply comments must be filed by [31 days after Federal Register publication of this Notice].

¹ On March 12, 2004, Max Media submitted a Reply to the Sunbelt Opposition in which it responds to Sunbelt's arguments and reiterates the claims made in its initial filing.

² Application numbers: BLCT-20000830AFL; BNPTT-20000828BIK; BNPTVB-20030930BBS; BLCT-20000830AFI; BNPTTL-20000829AJY; BNPTTL-20000829AJY; BNPTTL-20000829AIY; BNPTVL-20000829AIZ; BNPTVL-20000829AJN; BNPTTL-20000829AJP; BNPTTL-20000829AJS; BNPTTL-20000829AIX; BNPTVL-20000829AHE; BNPTVL-20000829AKB; BNPTVL-20000829AKA; BNPTVL-20000829AHJ; BNPTVB-20030915ACY; BNPTTL-20000829AHI; BNPTTL-20000829AHH; BNPTTL-20000829AHF; BNPTVL-20000829ALP; BNPTTL-20000829AJW; BNPTTL-20000829AJU; BNPTTL-20000829AJT; BNPTTL-20000829AHO; BNPTTL-20000829AHK; BNPTTL-20000829AHL; BNPTVL-20000829AHM; BNPTVL-20000829AJR; BNPTVL-20000829AJG; BNPTTL-20000829AJJ; BNPTTL-20000829AJL; and BNPTVL-20000829AHN.

Comments and reply comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies (an original and four copies). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. In addition, parties should serve one copy of each filing via email, or five paper copies, on Jane Gross, Jane.Gross@fcc.gov, Federal Communications Commission, Media Bureau, Policy Division, 445 12th Street, S.W., 3-A832, Washington, D.C., 20554.

Availability of Documents. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. These documents also will be available electronically from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Qualex International, Portals II, 445 12th Street, S.W., Room, CY-B402, Washington, D.C., 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail at qualexint@aol.com. To request materials in accessible formats for people with disabilities (Braille; large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

For further information contact Jane Gross, Media Bureau at (202) 418-2120.

By the Chief, Media Bureau

- FCC -

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: July 12, 1994

APPLICATION OF EX PARTE RULES TO
PROCEEDING INVOLVING "FORMAL PETITION
FOR ORDER TO SHOW CAUSE" AGAINST
TAMPA BAY TELEVISION, INC.,
STATION WFTS(TV), TAMPA, FLORIDA

Pending before the Commission is a "Formal Petition for Order to Show Cause" filed by Southern Broadcast Corporation of Sarasota ("SBC") (the "Petition") against Tampa Bay Television, Inc. ("TBT"), a wholly owned subsidiary of Scripps Howard Broadcasting Company ("Scripps"). SBC has also filed an "Emergency Motion for Expedited Hearing" requesting expedited consideration of its Petition (the "Motion").

SBC requests the issuance of an order to show cause why TBT's license to operate Station WFTS (TV), Tampa, Florida, should not be revoked for willful violation of the Commission's network territorial exclusivity rule, 47 C.F.R. § 73.658(b). It also characterizes its Petition as a formal complaint. Alternatively, SBC requests a Commission inquiry into Scripps' network affiliation practices with respect to the ABC Television Network pursuant to Section 403 of the Communications Act, 47 U.S.C. § 403, and the issuance of a cease and desist order directing Scripps to cease its continued violation of the Commission's network territorial exclusivity rule.

To avoid any uncertainty, we are announcing that we are treating this matter as a restricted adjudicative proceeding under the Commission's *ex parte* rules. Accordingly, *ex parte* presentations made to or from decision-making personnel in connection with SBC's Petition and Motion, or any related matter, are prohibited until the Commission's final disposition of this proceeding is no longer subject to reconsideration or judicial review. See 47 C.F.R. § 1.1208(a).

This action is taken by Chief, Mass Media Bureau.

For further information, contact Catherine M. Withers,
(202) 632-7048.

FEDERAL COMMUNICATIONS COMMISSION